

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION**

SHELLY D. SMITH, §
§
Plaintiff, § 4:12-CV-724
v. §
§
BANK OF AMERICA, NA, et al., §
Defendants. §

**MEMORANDUM ADOPTING REPORT AND
RECOMMENDATION OF THE UNITED STATES MAGISTRATE JUDGE**

Came on for consideration the report of the United States Magistrate Judge in this action, this matter having been heretofore referred to the United States Magistrate Judge pursuant to 28 U.S.C. § 636. On August 28, 2013, the report of the Magistrate Judge was entered containing proposed findings of fact and recommendations that Defendants' Motion to Dismiss Plaintiff's First Amended Complaint (Dkt. 14) be GRANTED as to Plaintiff's claims challenging the enforceability of the negotiable instrument, Plaintiff's TDCPA claims, and Plaintiff's DTPA claims, that those claims be dismissed for failure to state a claim, and that the motion to dismiss be DENIED as to Plaintiff's common law fraud and negligent misrepresentation claims. The Magistrate Judge further recommended that Defendants' Motion for Summary Judgment on Plaintiff's First Amended Complaint (Dkt. 25) be GRANTED as to all remaining claims, that Plaintiff take nothing by her claims here, and that final judgment be entered for Defendants awarding them their costs in this matter.

The court has made a *de novo* review of the objections raised by Plaintiff and Defendants' response and is of the opinion that the findings and conclusions of the Magistrate Judge are correct and the objections are without merit as to the ultimate findings of the Magistrate Judge. The court hereby adopts the findings and conclusions of the Magistrate Judge as the findings and conclusions

of this court.

Defendants' Motion to Dismiss Plaintiff's First Amended Complaint (Dkt. 14) is GRANTED as to Plaintiff's claims challenging the enforceability of the negotiable instrument, Plaintiff's TDCPA claims, and Plaintiff's DTPA claims, and those claims are dismissed for failure to state a claim. The motion to dismiss is DENIED as to Plaintiff's common law fraud and negligent misrepresentation claims.

Further, Defendants' Motion for Summary Judgment on Plaintiff's First Amended Complaint (Dkt. 25) is GRANTED as to all remaining claims, Plaintiff shall take nothing by her claims here, and final judgment shall be entered for Defendants awarding them their costs in this matter.

IT IS SO ORDERED.

SIGNED this the 30th day of September, 2013.



RICHARD A. SCELL
UNITED STATES DISTRICT JUDGE